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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/737,235

12/16/2003

Jody Lynn Hoying

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12/12/2007

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EXAMINER

JOHNSON, JENNA LEIGH

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/737,235	Applicant(s) HOYING, JODY LYNN	
	Examiner Jenna-Leigh Johnson	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 26, 2007 has been entered.

Response to Amendment

2. The Amendment submitted on October 26, 2007, has been entered. Claim 2 has been cancelled. Claims 1 and 15 have been amended. Therefore, the pending claims are 1 and 3 - 15.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3 - 5, 8, 12, and 15 stand rejected under 35 U.S.C. 102(e) as being anticipated by Provost et al. (2004/0157036) for the reasons of record.

6. Claims 1, 3, 6 - 10, 12, 13, and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. (5,508,080) for the reasons of record.

7. Claims 1, 4, 5, 8, and 12 - 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mende (5,180,620).

Mende discloses a composite nonwoven fabric comprising numerous projections or holes extending from the surface of the fabric (abstract). The composite fabric can be formed from a nonwoven fabric, i.e., a first fibrous web, bonded to a film layer bonded, i.e., a second layer, on the top side of the

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nonwoven fabric (column 14, lines 10 - 15). The projections are formed with an open or closed top (column 14, lines 15 - 20). The fabric is a nonwoven, meltblown fabric (column 14, lines 25 - 30), which would comprise randomly oriented fibers. The fibers can be produced from various materials including polyethylene and polypropylene fibers (column 6, lines 5 - 10). Further, the materials may be used in combinations with each other (column 6, lines 30 - 31), giving the nonwoven a blend of different filaments made from different materials which would result in the fibers having different properties such as surface energy and hydrophobicity. As shown in Figures 30 and 31, the bottom nonwoven layer projects towards and through the upper layer. The projections can be circular, oval, square or any other appropriate shape (column 6, lines 53 - 56). Which would all produce a distinct linear orientation within the MD-CD direction and have longitudinal axis within the MD-CD direction. The composite is produced with a desired pattern of tufts on the surface of the fabric (Figure 1). And the cloth can have preferably five or more projections per square centimeter (column 7, lines 10 - 11). The pores can have a diameter of 0.2 to 6 mm, and if the diameter of the pores is 0.2 to 1 mm, the composite can have 50 or more projections in every square centimeter (column 3, lines 35 - 42). Thus, the fibrous projections, when closed, would substantially cover the surface of the topside of the composite and the backside of the composite would also be covered by the fibers from the nonwoven fabric. Finally, Mende teaches that the fabric is used as the top layer of a diaper or sanitary napkin (column 9, lines 47 - 52), which would inherently include an absorbent layer and backsheet. Thus, claims 1, 4, 5, 8, 12, and 13 are anticipated.

Finally, the cloth layer can be treated to be either hydrophobic (column 16, lines 8 - 10). Thus, the nonwoven layer is relatively more hydrophobic than the film layer. Thus, claim 14 is anticipated.

With regard to claim 15, the requirement that the material is an absorbent core is considered an intended use limitation that does not change the structure of the composite fabric. Further, the web can be treated with a hydrophilic treatment to make it absorbent (column 16, lines 8 - 10). Thus, claim 15 is anticipated.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (6,120,718) for the reason of record.

10. Claims 1, 3 – 11, and 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson (6,048,600) for the reasons of record.

Double Patenting

11. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 27 of copending Application No. 10/737,306 for the reasons of record.

This application has been allowed, but has not been issued. Upon issuance of the allowed patent, the rejection will no longer be considered a provisional rejection.

12. Claims 1 and 3 – 15 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 21 of U.S. patent 7,172,801 (formerly Application No. 10/737,307) for the reasons of record.

13. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 10/737,430 for the reasons of record.

This application has been allowed, but has not been issued. Upon issuance of the allowed patent, the rejection will no longer be considered a provisional rejection.

14. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 44 of copending Application No. 10/737,640 for the reasons of record.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 25 of copending Application No. 11/156,020 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

16. Applicant's arguments filed October 26, 2007 have been fully considered but they are not persuasive. With regards to the Sorimachi et al. and the Provost rejections, the applicant argues that the needled tufted loops do not produce a discrete region with a distinct linear orientation in the MD-CD plane and a longitudinal axis in the MD-CD plane (response, pages 5 - 12). Specifically the applicant argues that because the shape of the tuft is a symmetrical circle it does cannot have a linear orientation. However, the limitation is interpreted to require that a distinct line can be mapped over the discrete region in the MD-CD plane. The individual tufts have a distinct width and length which can be mapped with a line and the tufts are placed into the composite to form rows of tufts which produce an overall distinct linear orientation and axis. This limitation is not considered to exclude circular or symmetrical tufted shapes. Thus, the rejection is maintained.

17. Further, the applicant argues that the rejection to claim 14 should be withdrawn. It is noted that this claim was withdrawn from the rejections based on Provost et al. and Sorimachi et al. in the Office Action mailed on February 6, 2007.

With regard to claim 15, the applicant also argues that the prior art fails to teach using the structure as absorbent core. However, the limitation that the product is an absorbent core is considered to be intended use. The claims only recite limitations with regards to the two layer structure itself, which is taught by

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the prior art. There are no additional limitations which distinguish or limit the diaper structure or absorbent structure to exclude a general two-layered structure. It has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejection is maintained.

18. The applicant argues that Hansson et al. should be withdrawn because the fibers do not extend toward the garment facing side of the article (response, pages 12 - 14). Further, the applicant interpreted the explanation of the fabric being “flipped over” as a required structure. However, the names of the different sides of the layers and the direction the fibers run “towards” are considered to be relative terms which can be assigned relatively to the two-layered structure of Hansson. The structure does not need to physically be turned over to define the top of each layer as the garment facing side and the bottom of each layer as the body facing side. In fact, the terms body facing and garment facing are terms that defined how the fabric is used and do not limit the two layers themselves. As set forth above, a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. In this case, which side is considered the body side and garment side is optional because the applicant is not claiming the layers in use and has not further limit the terms to require them to be only one of the two sides of the prior art layers. In other, words a body or garment could be placed on either side of the two-layer composite by itself. Thus, the rejection is not based on flipping the composite over, but as defining the composite as having a top side shown in Figure 2 as the garment facing side and the bottom side shown in Figure 2 as the body facing side. Further, it is noted that the term “toward” is relative because fibers which are reoriented in the vertical direction can be considered to be heading either towards something above them or something below them. They are not limited to heading towards only layers above them. Thus, where the top layer has been reoriented to have the fibers running almost vertical the fibers would be heading

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towards the top side (i.e., the garment facing side, as set forth above) of the lower layer (i.e., the second layer).

Additionally, the applicant argues that the two layers of Hansson et al. are not disposed in a face to face relationship to form a laminate (response, page 13). However, the bottom side of the top layer is directly attached to the top side of the bottom layer to form a laminate. The face-to-face relationship recited in the claims is not defined as requiring continuous face-to-face contact. The limitation is only considered to require the two layers be attached together in a laminate and exclude additional layers from being placed between the two layers. Thus, the layers of Hansson et al. meet the recited claim limitation since they are directly attached to form a laminate with no additional layers inserted between them. Thus, the rejection is maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj
December 10, 2007

/Jenna-Leigh Johnson/
Primary Examiner
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